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Via Email

President Michael R. Peevey
California Public Utilities Commission
505 Van Ness Avenue, 5th Floor
San Francisco, California, 94102

Education, Disclosure and Reform Regarding Optional Coverage
for TNC Drivers

Dear President Peevey:

Subsequent to CPUC Rulemaking 12-12-011 regarding Transportation Network Companies (TNCs), the California Department of Insurance (CDI) has been looking at how driving for a TNC may impact the optional coverages that a driver chooses for his or her personal auto policy.

Most standard auto policies contain some form of an exclusion for livery – which essentially means carrying passengers for hire.¹ This is especially relevant since certain TNCs have announced that payment for rides will no longer be voluntary. The CDI is concerned that a consumer who provides a ride to another community member through a TNC may not be aware that the driver's own personal auto coverage, including optional coverages such as medical payments, comprehensive, collision, uninsured or underinsured motorist (UM/UIM), may not provide protection.

Another concern is potential coverage disputes over the requirement that TNCs provide liability coverage for TNC drivers "while they are providing TNC services." The CPUC may want to consider defining the phrase "while providing TNC services" in order to prevent lengthy and expensive coverage disputes regarding when TNC services start and stop.

With regard to how driving for a TNC may impact optional coverages on a driver's personal auto policy, we are concerned that while TNCs are required to have liability coverage,

¹ Most of the livery exclusions do not apply in "share-the-expense" carpool situations. Thus payment for sharing expenses in a standard carpool situation would not appear to defeat coverage.

there is no requirement that TNCs provide medical payments coverage, comprehensive and collision coverage, UM/UIM or other optional coverages. This leaves potential gaps in coverage.

For example, if the driver is injured or the driver's car is damaged, the TNC's liability coverage will not pay for the driver's medical expenses or to fix the driver's car. This is because liability coverage only covers damage to third parties. Medical payments coverage would provide coverage for bodily injury to the driver. Comprehensive and collision coverage would provide coverage for damage to the TNC driver's car.

Another potential gap in coverage occurs if the TNC driver is involved in an accident caused by an uninsured or underinsured motorist. In that case, the TNC's liability coverage will not pay for injury or damage caused by the uninsured or underinsured motorist, including any injury to a passenger. This is because liability coverage only covers damages for which the insured driver is liable. UM/UIM coverage would provide coverage for injury or damage caused by an uninsured or underinsured motorist.

This system is the same for all drivers in California, whether driving for a TNC or not. Under California law, liability insurance is the only mandatory automobile coverage. There are numerous optional coverages, such as medical payments, comprehensive, collision and UM/UIM, that a consumer may choose to purchase.² But consumers who opt to purchase those coverages on their personal auto policy may not be aware that their insurer may deny coverage for damages caused while they are driving for a TNC and getting paid a fee for more than share-the-expense carpooling.

Consequently, the CDI is planning to post information for consumers on its website advising that TNCs are only required to maintain liability insurance and are not required to provide medical payments, comprehensive, collision, UM/UIM or other optional coverages. Thus, the TNC's policy does not have to provide coverage for: 1) bodily injury to the TNC driver; 2) damages to the TNC driver's car; or 3) bodily injury or damage to the passenger or driver caused by an uninsured or underinsured motorist. Further, if a TNC driver accepts a fee from a passenger for something other than share-the-expense carpooling, the livery exclusion in the driver's personal auto policy may apply to defeat coverage. Accordingly, TNC drivers who want to avoid these gaps in coverage should contact their agent, broker or insurance company and consider buying a commercial policy with the optional coverages necessary for broader protection.

Because of the gaps in coverage, we recommend that the CPUC consider whether it should require TNCs to provide at least the following additional coverages:

² While these coverages are not required by California law, most of them, with the exception of medical payments, are required by contract under most car loans.

- Medical payments coverage that would be triggered if the TNC driver carries medical payments coverage on his or her personal auto policy.
- Comprehensive and collision coverage that would be triggered if the TNC driver carries comprehensive or collision coverage on his or her personal auto policy.
- UM/UIM coverage that would be triggered if the TNC driver carries UM/UIM coverage on his or her personal auto policy.

In each instance above, the TNC's policy should be required to provide the same dollar amount of coverage that the TNC driver chooses for his or her personal auto policy. If the TNC driver chooses not to carry medical payments, comprehensive, collision or UM/UIM on his or her personal auto policy, the TNC policy would not provide that coverage to the driver. In other words, these optional coverages would "toggle" on or off depending on whether the TNC driver chose the coverage on his or her personal auto policy.

Under this arrangement, the TNC driver would still have to pay out-of-pocket: 1) for his or her medical expenses; 2) to repair his or her car; or 3) for any damages caused by an uninsured or underinsured driver IF the TNC driver opted not to include those coverages on his or her personal auto policy. But medical payments, comprehensive, collision and UM/UIM would be provided by the TNC policy if the TNC driver paid for those coverages on his or her personal auto policy.

We also strongly recommend that the CPUC require TNCs to: 1) advise TNC drivers that the \$1 million TNC liability policy does not provide coverage to pay for bodily injury to the TNC driver, to pay to repair the TNC driver's car or for injury or damage caused by an uninsured or underinsured motorist; and 2) have TNC drivers sign a form indicating that they are aware of the above coverage limitations. If the CPUC changes the TNCs' mandatory coverage requirements, the disclosures should be amended accordingly.

Disclaimer

CDI regulates insurance companies, brokers and agents. CDI does not provide coverage opinions regarding automobile coverage and this letter should not be relied upon as a legal opinion regarding coverage issues for TNCs or TNC drivers. CDI has nonetheless made a good faith effort to point out what it sees as potential gaps in optional coverage that ordinary TNC drivers may not be aware of.

Conclusion

The current insurance requirements for TNCs leave potential gaps in coverage for medical payments, comprehensive, collision, UM/UIM and other optional coverages. This is true even if the TNC driver opted to purchase those coverages for his or her personal auto policy.

but is providing rides that require payment for more than share-the-expense carpooling. The CPUC may want to consider requiring TNCs to maintain medical payments, comprehensive, collision and UM/UIM coverage that would apply to fill those gaps if the driver had purchased the same protection on his or her own personal auto policy. Regardless of whether these optional coverages are later mandated, the public and TNC drivers should be made aware of these potential gaps in coverage.

CDI applauds the CPUC for its work on these complex and difficult issues and is happy to provide whatever assistance it can to help the CPUC find a workable solution to the coverage issues discussed above.

If you have any questions, please contact me at (415) 538-4148.

Sincerely,

A handwritten signature in black ink, appearing to read "McCune", with a large, stylized loop at the beginning.

Jennifer McCune

Cc: Commissioner Michel Peter Florio
Commissioner Catherine J.K. Sandoval
Commissioner Mark J. Ferron
Commissioner Carla J. Peterman

Chief Executive Director Paul Clanon
Carol Brown, Chief of Staff to President Peevey
Ditas Kitague, Chief of Staff to Commissioner Sandoval